

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 94-234

In the Matter of )

Implementation of Sections of the )  
Cable Television Consumer Protection )

and Competition Act of 1992: Rate Regulation )

MM Docket No. 93-215

MM Docket No. 92-266

**FIFTH ORDER ON RECONSIDERATION  
AND FURTHER NOTICE OF PROPOSED RULEMAKING**

Adopted: September 12, 1994

; Released: September 26, 1994

By the Commission:

Comment Date: November 16, 1994

Reply Comment Date: December 16, 1994

**I. INTRODUCTION**

1. In this *Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking* we consider whether to establish a ninety-day period after the initial date of regulation in which small operators may restructure rates and service offerings to comply with our rules governing regulated cable services, and whether to permit such rates and service offerings to be implemented without prior regulatory approval. We also seek comment on definitions of small businesses that could be used to define eligibility for any special rate or administrative treatment that could be established for cable operators in final rules in the above-captioned proceedings.

**II. FIFTH ORDER ON RECONSIDERATION**

**A. Background**

2. Pursuant to the Cable Television Consumer Protection and Competition Act of 1992,<sup>1</sup> the Commission has established a comprehensive regulatory framework governing

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<sup>1</sup> Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), 47 U.S.C. § 534 (1992) (hereinafter "the 1992 Cable

rates for regulated cable services and equipment.<sup>2</sup> Under that framework, all regulated cable systems generally must set rates based on a 17 percent competitive rate reduction from September 30, 1992 levels unless the system (1) is eligible for temporary transition relief, pending the completion of cost studies by the Commission, (2) is eligible for streamlined rate relief pending the completion of our cost studies, or (3) justifies rates based on a cost-of-service showing.<sup>3</sup>

3. The 1992 Cable Act requires the Commission to reduce regulatory burdens on small systems.<sup>4</sup> Small systems are defined in the statute as systems serving 1,000 or fewer subscribers.<sup>5</sup> Pursuant to that mandate, the Commission's regulatory framework governing regulated cable services incorporates several features designed to reduce administrative burdens on independent small systems and small systems owned by small multiple system operators ("small MSOs").<sup>6</sup> These small systems may elect to make streamlined rate reductions under which they may reduce each billed item of regulated cable service as of March 31, 1994 by 14 percent instead of setting rates based on 17 percent competitive rate

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Act" or "the Cable Act of 1992"). The Cable Act of 1992 amends Title 6 of the Communications Act of 1934, as amended, 47 U.S.C. § 521 et seq. (hereinafter "the Communications Act").

<sup>2</sup> See *Report and Order and Further Notice of Proposed Rulemaking*, ("Rate Order"), MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631 (1993); *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 93-389, 8 FCC Rcd 5585 (1993); *First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 93-428, 9 FCC Rcd 1164 (1993); *Second Order on Reconsideration, Fourth Report and Order and Fifth Notice of Proposed Rulemaking*, ("Second Reconsideration Order"), MM Docket No. 92-266, FCC 94-38, summarized at 59 Fed. Reg. 17943 (April 15, 1994); *Third Order on Reconsideration*, ("Third Reconsideration Order"), MM Docket Nos. 92-266 and 92-262, FCC 94-40, summarized at 59 Fed. Reg. 17961 (April 15, 1994).

<sup>3</sup> See 47 C.F.R. § 76.922(b)(1). Interim rules and policies governing a cost-of-service showing are set forth in the *Report and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 93-215, FCC 94-39, summarized at 59 Fed. Reg. 17975 (April 15, 1994).

<sup>4</sup> Communications Act, § 623(i), as amended, 47 U.S.C. § 543(i).

<sup>5</sup> *Id.*

<sup>6</sup> A small MSO is an MSO serving 250,000 or fewer total subscribers that owns only systems with less than 10,000 subscribers each and has an average system size of 1,000 or fewer subscribers. See 47 C.F.R. § 76.922(b)(5)(A).

reductions from September 30, 1992 levels.<sup>7</sup> This reduces administrative burdens by eliminating the need for these small systems to complete FCC Forms 1200 and 1205, and by eliminating the requirements to unbundle equipment and installation charges from programming service charges, and to set equipment and installation charges at actual cost.<sup>8</sup> The Commission may terminate this administrative relief upon completion of cost studies by the Commission and development of average equipment cost schedules.<sup>9</sup>

4. Independent small systems and small systems owned by any cable operator may also establish unbundled charges for regulated equipment based on the average equipment costs of the small systems. Under this approach, a cable operator of any size generally may average the equipment costs of all its small systems, or only some of them, for purposes of developing unbundled equipment charges for its small systems.<sup>10</sup> Under our interim cost-of-service rules, small systems owned by small MSOs may use simplified forms for purposes of making cost-of-service showings.<sup>11</sup> Small operators, defined as operators serving 15,000 or fewer subscribers and not affiliated with a larger operator, are eligible for transition relief.<sup>12</sup> Instead of setting rates based on a 17 percent competitive reduction, small operators may maintain their March 31, 1994 rates, with certain adjustments as determined under FCC Form 1200.<sup>13</sup>

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<sup>7</sup> 47 C.F.R. § 76.922(b)(5)(B).

<sup>8</sup> See *Second Reconsideration Order* at paras. 209, 210, MM Docket No. 92-266, FCC 94-38, summarized at 59 Fed. Reg. 17943 (April 15, 1994).

<sup>9</sup> See *Second Reconsideration Order* at para. 212, MM Docket No. 92-266, FCC 94-38, summarized at 59 Fed. Reg. 17943 (April 15, 1994).

<sup>10</sup> 47 C.F.R. § 76.923(l). The Commission may alter this cost averaging approach as a result of our cost studies. See *Second Reconsideration Order* at para. 219, MM Docket No. 92-266, FCC 94-38, summarized at 59 Fed. Reg. 17943 (April 15, 1994).

<sup>11</sup> See *Report and Order and Further Notice of Proposed Rulemaking* at para. 272 - 279, MM Docket No. 93-215, FCC 94-39, summarized at 59 Fed. Reg. 17975 (April 15, 1994).

<sup>12</sup> See 47 C.F.R. § 76.922(b)(4)(A)(i). Low-price systems are also eligible for transition treatment. Low-price systems are those (1) whose March 31, 1994 rate is below their March 31, 1994 benchmark rate or (2) whose March 31, 1994 rate is above their March 31, 1994 benchmark rate, but whose March 31, 1994 full reduction rate is below their March 31, 1994 benchmark rate, as determined under FCC Form 1200. 47 C.F.R. § 76.922(b)(4)(B)

<sup>13</sup> 47 C.F.R. § 76.922(b)(4)(A)(iii).

5. Under the rules adopted in the *Rate Order*, we required cable operators to file a rate justification or cost-of-service showing for the basic service tier and accompanying equipment, and for the cable programming service tier and accompanying equipment, within 30 days of the initial date of regulation.<sup>14</sup> All cable operators are required to have rates and service offerings that comply with our rules on the initial date of regulation.<sup>15</sup> Operators with equipment or programming service charges that exceed permitted levels are subject to refund liability.<sup>16</sup> Refund liability is calculated based on the difference between the old bundled rates charged prior to regulation and the sum of the new unbundled program service charges and new unbundled equipment charges established after the initial date of regulation.<sup>17</sup> Revenue neutral adjustments of equipment and programming rates to achieve unbundled equipment rates will not by itself trigger refund liability.<sup>18</sup> The Small Cable Business Association ("SCBA") has expressed concern about the deadlines by which small operators must achieve this unbundling.<sup>19</sup>

B. Discussion

6. As indicated, the 1992 Cable Act requires the Commission to reduce administrative burdens for small systems. We believe this statutory purpose would be furthered by permitting small operators a brief period of time to restructure and establish

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<sup>14</sup> See *Rate Order* at para. 116, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631 (1993). The *Rate Order* provided that a local franchising authority may take 30 days to review a proposed rate increase before it goes into effect and may extend that period by up to an additional 90 days for a benchmark filing and an additional 150 days in the case of a cost-of-service filing. *Id.* at paras 118-119.

<sup>15</sup> The initial date of regulation of the basic service tier is the date on which a certified local franchising authority notifies the operator that the basic service tier is subject to regulation. 47 C.F.R. Section 76.922(b)(7). The initial date of regulation of the cable programming service ("CPS") tier is the date on which a valid rate complaint is filed with the Commission. *Id.*

<sup>16</sup> 47 C.F.R. §§ 76.942, 76.961.

<sup>17</sup> 47 C.F.R. § 76.942(a). This same analysis applies to unbundled rates charged prior to the initial date of regulation. *Id.*

<sup>18</sup> *Order in the Matter of Emergency Petition for Limited Extension of Refund Liability Deferral Period for Small Systems and Small Operators*, DA 94-592, n. 5 (released June 7, 1994); see also *Letter from the Cable Services Bureau to Small Cable Business Association*, DA 94-846 (released August 3, 1994).

<sup>19</sup> See generally SCBA's *Emergency Petition for Limited Extension of Refund Liability Deferral Period for Small Systems and Small Operators* (filed May 27, 1994).

rates and service offerings that comply with our rules after a tier becomes regulated, rather than require them to be in compliance with rate rules on the initial date of regulation.<sup>20</sup> This will reduce administrative burdens on small operators by assuring that they will not need to undertake the steps associated with establishing restructured rates and service offerings that comply with our rules, including completion of necessary FCC forms, until they are actually regulated. Moreover, this additional time to comply will not harm cable subscribers because, under transition relief, small operators are not required in any event to make competitive rate reductions pending cost studies, but may set rates based on March 31, 1994 levels with some

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<sup>20</sup> We take these actions on reconsideration on our own motion. Petitions for reconsideration in Dockets MM 92--266 and 93-215 addressing other aspects of our rate rules remain pending and will be addressed in subsequent Orders. We take up these issues on our own motion in order to establish additional relief for small systems as required by the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. § 543 .

In the *Rate Freeze Order*, the Commission stated that it would consider lifting the freeze for a particular cable system if it could demonstrate that the freeze would impose severe economic hardship or threaten the viability of continued cable service. *See Rate Freeze Order*, MM Docket No. 92-266, FCC 93-176, 8 FCC Rcd 2921, 58 Fed. Reg. 17530 (April 5, 1993). The Commission later denied Fidelity Cablevision, Inc.'s request for a waiver of the rate freeze for, among other things, failing to show that foreclosure proceedings had been, or would have been, initiated as a result of the rate freeze. *See Order in the Matter of Fidelity Cablevision, Inc. Petition for Emergency Relief*, FCC 93-445, 9 FCC Rcd 2629 (1993). In a July 28, 1994 letter, Jere W. Glover, Chief Counsel for Advocacy of the Small Business Administration, wrote to Chairman Reed E. Hundt that "[p]roviding assistance at the time of bankruptcy or other type of loan foreclosure is too little assistance too late."

In the *Report and Order and Further Notice of Proposed Rulemaking* in MM Docket No. 93-215, the Commission made available hardship rate relief for an operator that concludes that the benchmark/cost-of-service regulations threaten its financial health or ability to provide cable service. *See Report and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 93-215, FCC 94-39, summarized at 59 Fed. Reg. 17975 (April 15, 1994). Such relief does not require a showing that foreclosure or bankruptcy proceedings have been or would be imminently initiated, and continued cable service need not be in jeopardy. An important factor in assessing any hardship showing will be the operator's ability to meet costs, including costs associated with capital improvement and debt service. We recognize that there are differences among cable operators based on system size, and that small operators may experience greater difficulty in assembling documentation to make a hardship showing. Therefore, we would expect that a small operator could rely on existing data rather than expending resources on obtaining an independent analysis of its financial situation. Furthermore, the Commission recognizes that for those operators facing financial challenges, time is of the essence. The Commission will work as expeditiously as possible to resolve any request for hardship rate relief filed.

adjustments.<sup>21</sup> And, as indicated, operators will not incur refund liability solely on account of restructuring rates and service offerings to comply with our rules.<sup>22</sup> Accordingly, we conclude that establishing a period of time after regulation begins for small operators to comply will further statutory purposes without injuring consumers.

7. We believe that 90 days after the initial date of regulation is an appropriate period of time for small operators to establish rates and service offerings that comply with our rules. This will afford small operators sufficient time to determine correct rates, complete forms, arrange for billing, and submit forms to regulatory authorities. Accordingly, we will revise our rules to provide that small operators are not required to establish rates and service offerings that comply with our rules for ninety days after the initial date of regulation. In addition, in order to assure that this will reduce administrative burdens, we are changing our rules to provide that small operators do not need to file necessary rate justification forms with the local franchising authority, or the Commission where appropriate, for the basic service tier, or with the Commission for a cable programming service tier, until 60 days after the initial date of regulation. This will provide these operators additional time to complete these forms. However, we are not altering our rules concerning provision of advance notice of rate changes to subscribers. Pursuant to those rules, all operators, including small operators, must give 30 days notice to subscribers prior to implementing rate and service changes.<sup>23</sup>

8. Additionally, small systems and small operators may make their initial basic tier rates, established in accordance with the Commission's revised rate regulations, effective

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<sup>21</sup> It is for this reason that we provide the ninety-day grace period only to small operators. Systems owned by small operators are eligible for transition relief and do not have to reduce their March 31, 1994 rates pending Commission cost studies. Other small systems are required to reduce their September, 30, 1992 rates by the competitive differential unless they qualify as low-price systems or qualify for and elect the streamlined rate reduction methodology. This reduction was required to take place by the latter of July 14, 1994 or the initial date of regulation. For regulated small operators, restructured rates must be in place by September 1, 1994. *See Order in the Matter of Emergency Petition for Limited Extension of Refund Liability Deferral Period for Small Systems and Small Operators*, DA 94-592, released June 7, 1994 by the Cable Services Bureau.

<sup>22</sup> This *Order* does not have any effect on any operator's refund liability under our rules.

<sup>23</sup> *See Second Reconsideration Order* at para. 139, MM Docket No. 92-266, FCC 94-38, summarized at 59 Fed. Reg. 17943 (April 15, 1994).

on 30-days notice without prior approval from their local franchising authority.<sup>24</sup> If, upon subsequent examination of a rate justification, a local franchising authority or the Commission finds that a small operator has implemented rates in excess of the maximum permitted rate, refunds may be ordered in accordance with our regulations<sup>25</sup>

### III. FURTHER NOTICE OF PROPOSED RULEMAKING

#### A. Background

9. In 1992, Congress amended § 3(a) of the Small Business Act<sup>26</sup> to require federal agencies to use small business definitions created by the Small Business Administration ("SBA"), or in the alternative, seek public comment on different definitions and obtain the approval of the Small Business Administrator with regard to any regulation applicable to small businesses, unless other statutory definitions are applicable.<sup>27</sup> SBA rules currently define a small cable company as one with \$11 million or less in gross revenues.<sup>28</sup> In this rulemaking, the SBA's Office of Advocacy and the SCBA have expressed concern about the Commission's definitions of small operators eligible for transition relief and our

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<sup>24</sup> Small operators would be unable to take advantage of the 90-day compliance period and bring their rates into compliance by the end of the period absent the elimination of the prior approval requirement. The elimination of a prior approval requirement in these circumstances is consistent with previous Cable Services Bureau interpretations. *See Question and Answer No. 4* (released by Cable Service Bureau, July 27, 1994), allowing basic tier rates established on or before July 14, 1994, or September 1, 1994 in the case of small operators, to become effective without prior approval where revised rate regulations required restructuring to be completed before rate justification form was required to be filed.

<sup>25</sup> 47 C.F.R. §§ 76.942, 76.961

<sup>26</sup> *See Small Business Credit and Business Opportunity Enhancement Act*, Pub. L. No. 102-366, §222, 106 Stat. 986, 999 (1992). The SBA has not yet promulgated regulations to implement this amendment. *See Size Standards; Establishment of Size Standards*, 58 Fed. Reg. 44620 (August 24, 1993) (proposed rule).

<sup>27</sup> 15 U.S.C. 632(a).

<sup>28</sup> 59 Fed. Reg. 16513 (April 7, 1994). This SBA definition became effective after the Commission adopted and released its rules establishing transition relief for small operators. The Commission's *Second Reconsideration Order* was adopted February 22, 1994 and released March 30, 1994. The SBA's revised definitions were adopted April 7, 1994 and became effective April 22, 1994. The Commission's rules were published in the Federal Register on April 15, 1994 and became effective May 15, 1994. Previously, the SBA defined a small cable company as one with \$7.5 million or less in gross revenues. 13 C.F.R. 121.601 (1993).

definition of small MSOs.<sup>29</sup> Specifically, the SBA's Office of Advocacy and the SCBA believe the current definitions in our rules defining eligibility for transition and administrative relief are underinclusive and were promulgated in violation of § 3(a) of the Small Business Act. They urge us to re-evaluate the definitions and seek public input before deciding on permanent standards.<sup>30</sup> SCBA also has filed an intervenors' brief in a lawsuit challenging the Commission's cable rate regulations.<sup>31</sup>

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<sup>29</sup> See *Reply Comments of the Chief Counsel for Advocacy of the United States Small Business Administration on the Further Notice of Proposed Rulemaking* in MM Docket No. 93-215, submitted July 28, 1994; *SCBA Reply Comments to the Fifth Notice of Proposed Rulemaking* in MM Docket No. 92-266, submitted July 27, 1994.

<sup>30</sup> The Chief Counsel of the SBA's Office of Advocacy has urged the Commission to explore a full range of burden-reducing regulatory options in our rate proceedings. See footnote 20, *supra*. We are in full agreement with that suggestion. Based on the existing record, however, we are not persuaded that the actions taken to date to ease the regulatory difficulties faced by smaller operators have been undertaken in violation of the law. Specifically, the Commission does not believe that Small Business Administration size standards, to which federal agencies may be required to adhere under Section 3 of the Small Business Act, are applicable to the Commission's definitions of small cable operators and small cable systems developed in the *Second Reconsideration Order*. For example, Section 3(a) of the Small Business Act provides that SBA size standards apply for the purposes of all legislation, unless the legislation specifically authorizes different size standards. The 1992 Cable Act in fact contains a size definition of a small system as one with 1,000 or fewer subscribers. See 47 U.S.C. § 543(i). Specifically, the statute requires the Commission to develop cable rate regulations that reduce cost and administrative burdens for such "small systems." Given the statute's small system definition of 1,000 or fewer subscribers, Section 3(a) of the Small Business Act is inapplicable. The Commission has implemented the statutory provision regarding small system relief in a more flexible manner than is explicitly mandated by the Cable Act and is now considering further flexibility through extending relief to additional systems. But this does not alter the fact that the Commission is implementing a statute with an explicit small business size standard. Additionally, the Small Business Act defines small-business concerns as one "which is not dominant in its field of operation." 15 U.S.C. § 632(a)(1). Cable systems subject to rate regulation, regardless of whether they are large or small, are by definition dominant in their field of operation because they do not face effective competition. Thus, Section 3(a) of the Small Business Act also does not apply because regulated cable systems do not meet the definition of a small business concern.

<sup>31</sup> See *Brief of Intervenor Small Cable Business Association in Time Warner Entertainment Co., L.P., et al. vs. Federal Communications Commission and United States of America*, No. 93-1723, (D.C. Cir.).



## B. Discussion

10. As indicated, in the *Second Reconsideration Order*,<sup>32</sup> we established transition treatment for small operators pending completion of our cost studies, and have established administrative relief for independent small systems and small systems owned by small MSOs. Under our interim cost-of-service rules, independent small systems and small systems owned by small MSOs also may use special forms for cost-of-service showings. When cost studies are completed, we may make permanent, eliminate, or modify our transition rate treatment of small operators. When we develop average equipment cost schedules, we may terminate or modify our provisions for streamlined rate reductions for independent small systems and small systems owned by small MSOs. In our final cost proceeding, we may modify our requirements for cost showings by independent small systems and small systems owned by small MSOs.

11. We believe that it would establish a more complete record for purposes of promulgating final rate rules applicable to small operators, independent small systems, and small systems owned by small MSOs if we obtain comment on possible alternative definitions that we could use for purposes of determining eligibility for special rate or administrative treatment provisions that could apply to small businesses. We are initiating the instant *Further Notice of Proposed Rulemaking* for purposes of obtaining this comment.

12. Accordingly, we solicit comment on whether we should retain current definitions or use different definitions for purposes of establishing special rate or administrative treatment for small operators and small MSOs that could be small businesses. We specifically seek comment on these issues in light of Section 3(a) of the Small Business Act, and on whether we should employ the current SBA definition of a small cable company in our cable rules.

## IV. REGULATORY FLEXIBILITY ANALYSIS

### A. Final Regulatory Flexibility Analysis for the *Fifth Order on Reconsideration*

13. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. § § 601-12, the Commission's final analysis with respect to the *Fifth Order on Reconsideration* is as follows:

14. Need and purpose of this action: The Commission, in compliance with section 3(i) of the Cable Television Consumer Protection and Competition Act of 1992 pertaining to rate regulation, adopts rules and procedures intended to ensure cable subscribers of reasonable rates for cable services with minimum regulatory and administrative burden on cable entities.

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<sup>32</sup> See *Second Reconsideration Order*, MM Docket No. 92-266, FCC 94-38, summarized at 59 Fed. Reg. 17943 (April 15, 1994).

15. Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis: There were no comments submitted in response to the Initial Regulatory Flexibility Analysis. The Chief Counsel for Advocacy of the United States Small Business Administration filed comments in the original rulemaking order ("SBA"). The Commission addressed the concerns raised by the SBA in the *Rate Order*.<sup>33</sup> The SBA filed reply comments in MM Docket No. 93-215 and the SCBA filed reply comments in MM Docket No. 92-266. Those comments will be reviewed as part of the instant *Further Notice of Proposed Rulemaking*.

16. Significant alternatives considered and rejected. Petitioners representing cable interests and franchising authorities submitted several alternatives aimed at minimizing administrative burdens. The Commission responded to these comments in previous *Orders* in these dockets. Although the Commission is issuing this *Fifth Order on Reconsideration* on its own motion, the Commission has attempted to accommodate commenters' concerns and to reduce administrative burdens by providing an additional period of time for small cable operators to comply with the rate regulations.

B. Initial Regulatory Flexibility Analysis for the Further Notice of Proposed Rulemaking.

17. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 et seq. (1981).

18. Reason for action. The Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services. The Commission has adopted rate regulations that require a comparison to the rates of cable systems subject to effective competition, as defined in the Cable Act of 1992 and represented in the revised benchmark formula. This Notice proposes to review and determine appropriate definitions of small systems, small operators, and small MSOs for the purpose of determining rate regulation applicable to these categories of companies.

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<sup>33</sup> See *Rate Order*, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631 (1993).

19. Objectives. To propose rules to implement Section 3 of the Cable Television Consumer Protection and Competition Act of 1992. We also desire to adopt rules that will be easily interpreted and readily applicable and, whenever possible, minimize the regulatory burden on affected parties.

20. Legal Basis. Action as proposed for this rulemaking is contained in Sections 4(i), 4(j), 303(r) and 623 of the Communications Act of 1934, as amended.

21. Description, potential impact and number of small entities affected. We anticipate a possible impact on small entities because the Notice addresses the definitions of small systems, small operators and small MSOs for use in determining rate rules affecting these classes of cable operators.

22. Reporting, record keeping and other compliance requirements. None.

23. Federal rules which overlap, duplicate or conflict with this rule. None.

24. Any significant alternatives minimizing impact on small entities and consistent with stated objectives. None.

#### **V. Paperwork Reduction Act**

25. The requirements adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified information collection requirements on the public.

#### **VI. Procedural Provisions**

26. Ex parte Rules - Non-Restricted Proceeding. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission rules. See generally 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

27. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before November 16, 1994 and reply comments on or before December 16, 1994. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street N.W., Washington D.C. 20554.

## VII. Ordering Clauses


28. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 4(j), 303 (r), 612, and 623 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 532, and 543 the rules, requirements and policies discussed in this *Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking*, ARE ADOPTED and Section 76.934 of the Commission's rules, 47 C.F.R. Section 76.934, IS AMENDED as set forth in Appendix A.

29. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 4(j), 303(r), 612(c), 622(c) and 623 of the Communications Act of 1934, 47 U.S.C. §§ 154 (i), 154 (j), 303(r), 532 (c), 542(c), and 543, NOTICE IS HEREBY GIVEN of proposed amendments to Part 76, in accordance with the proposals, discussions, and statement of issues in this *Further Notice of Proposed Rulemaking*, and that COMMENT IS SOUGHT regarding such proposals, discussion, and statement of issues.

30 IT IS FURTHER ORDERED that, the Secretary shall send a copy of this *Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601 et seq. (1981).

31. IT IS FURTHER ORDERED that, the requirements and regulations established in this decision shall become effective thirty (30) days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary

## APPENDIX A

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

### PART 76 - CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552, as amended, 106 Stat. 1460.

2. Section 76.934 is retitled Small Systems and Small Operators and is amended to add section (e):

#### § 76.934 Small Systems and Small Operators

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(e) Systems owned by Small Operators. Systems owned by small operators as defined in Section 76.922(b)(4)(A) shall have 90 days from their initial date of regulation on a tier to bring their rates for that tier into compliance with the requirements of Sections 76.922 and 76.923. Such systems shall have sixty days from the initial date of regulation to file FCC Forms 1200, 1205, 1210, 1211 1215, 1220 and/1225 and any similar forms as appropriate. Rates established during the 90-days period shall not be subject to prior approval by franchising authorities or the Commission, but shall be subject to refund pursuant to sections 76.942 and 76.961 of these rules.